

JAN 18 2008

Application No.: 10/721,154

Docket No.: JCLA10379-R

REMARKSPresent Status of the Application

The Office Action rejected claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 under 35 USC 102 (e) as being anticipated by Crocker et al. (Crocker) US Pub. No. 2005/0009537.

Discussion of the Eligibility of Crocker as a Prior Art Reference

In the immediate previous reply submitted on June 28, 2007, Applicants had stated that the cited reference "Crocker" fails to qualify as prior art of the present invention.

In response thereto, the Examiner further cited the Bibliographic Data Sheet dated 1/18/2006, as an evidence in supporting that "Crocker does indeed claim benefit to the provisional date of July 11, 2003" (page 2 of the current Office Action).

Applicants acknowledge the content contained in the Bibliographic Data Sheet. However, this still cannot antedate the effective U.S. filing date of Croker to the filing date of the provisional date of July 11, 2003.

In the Bibliographic Data Sheet, Crocker states: "This appln claims benefit of 60/486,684 07/11/2003 and claims benefit of 60/527,603 12/05/2003".

In MPEP § 706.02(f)(1) II, Example 2 teaches: "For reference publications and patents of patent applications filed under 35 U.S.C. 111(a), the prior art dates under 35 U.S.C. 102(e) accorded to these references are the earliest effective U.S. filing dates. Thus, a publication and patent of a 35 U.S.C. 111(a) application, which claims benefit under 35 U.S.C. 119(e) to a prior

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U.S. provisional application or claims the benefit under 35 U.S.C. 120 of a prior nonprovisional application, would be accorded the earlier filing date under 35 U.S.C. 102(e), assuming the earlier-filed application has proper support for the subject matter as required by 35 U.S.C. 119(e) or 120".

Therefore, it should be noted only those claiming benefit under 35 U.S.C. 119(e) to a prior U.S. provisional application are qualified to claim the benefit of priority of the provisional application.

35 U.S.C. 119(e) governs:

(1) "An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an **inventor or inventors named in the provisional application**, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application ..." (Emphasis added)

Please note, although Crocker and the provisional application 60/486,684 are all assigned to a same assignee, the inventors of Crocker are completely distinct from that of the provisional application 60/486,684. As such, the filing date of the provisional application 60/486,684 is not eligible to be the earliest effective U.S. filing date of Crocker.

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Further, suppose if Crocker has properly relied upon the provisional application to claim the benefit of priority, and thereby antedated Crocker reference to the filing date of the provisional application, that means, all subject matters contained in Crocker reference should have been disclosed by the provisional application. Apparently, none of inventors of Crocker reference is one of the inventors of the provisional application, and there exist much difference between Crocker and the provisional application. One of the differences is, for example, in the current Office Action, the Examiner relies on Figs. 4 and 6, paragraph [0024], [0030]-[0033] of Crocker. However, after comparing the two references, it can be learnt that the designated parts of Crocker had not at all been disclosed in 60/486,684".

Applicants suggest to think from another point of view, in which if Crocker is eligible as a prior art of the present invention because of claiming benefit of the provisional application 60/486,684, then the provisional application 60/486,684 should have disclosed every subject matter the Examiner relied upon from the Crocker reference in rejecting the present invention. If it is true, then the provisional application 60/486,684 itself would be a better reference in making the 102(e) rejection. However, if the provisional application 60/486,684 does not anticipate the present invention, as set forth in the claims, the later reference, i.e., Crocker, which claims the benefit thereof, either is not eligible to share the effective filing date thereof, or does not anticipate the present invention too.

As such, for at least the foregoing reasons, Crocker, is not eligible to antedate its effective filing data to the filing data of the provisional application 60/486,684, and is submitted to be

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ineligible to be a prior art in rejecting the claimed invention under 35 U.S.C. 102(e).

**Discussion of the claim rejection under 35 USC 102**

The Office Action rejected claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 under 35 USC 102 (e) as being anticipated by Crocker et al. (Crocker) US Pub. No. 2005/0009537.

In response thereto, Applicants hereby otherwise traverse these rejections, and submit the claimed invention is not anticipated by Crocker.

As discussed above, Crocker, is not eligible to antedate its effective filing date to the filing date of the provisional application 60/486,684, and is submitted to be ineligible to be a prior art in rejecting the claimed invention under 35 U.S.C. 102(e).

Therefore, any rejection relying upon Crocker in order to arrive at the claimed invention should be withdrawn.

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CONCLUSION

For at least the foregoing reasons, it is believed that all the pending claims 1, 6-8, 10-13, 18-20, 22-25, 30-32, 36, and 41-43 of the present application patently define over the prior art and are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

Respectfully submitted,  
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